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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,929	11/21/2003	John M. Forsythe	1957-6012.1US	4005
24247	7590	10/04/2007		
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			EXAMINER HYUN, PAUL SANG HWA	
			ART UNIT 1743	PAPER NUMBER
			NOTIFICATION DATE 10/04/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/719,929

Applicant(s)

FORSYTHE ET AL.

Examiner

Paul S. Hyun

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/1/04, 5/31/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REMARKS

The preliminary amendments to the claims and Specification filed by Applicants on 3/01/04 have been acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck (US 5,358,851) in view of Chapple (US 6,610,908 B1).

Peck discloses an instruction for quantitatively analyzing chemicals [e.g. 2-methylnaphthalene (see line 36, col. 2)] in soil (see lines 1-17, col. 6) by using a kit. The instruction comprises the steps of:

- a) collecting a sample (i.e. soil);
- b) providing a container comprising an extraction solution;

c) placing the sample in the container to extract the aromatic hydrocarbons;
d) transporting the container to a gas chromatograph; and
e) and quantitatively measuring the amount of extracted hydrocarbons (see Example 4, col. 11).

The method disclosed by Peck differs from the claimed invention in that Peck does not disclose the use of an internal standard.

Chapple discloses a method of quantitatively analyzing the composition of a lignin monomer sample (see lines 20-55, col. 18). The method comprises the steps of providing a glass tube comprising an extraction solution and an internal standard, extracting the analytes of interest, and quantitatively analyzing the extracted analytes and the internal standard using gas chromatography, wherein the concentrations of the analytes of interest are calculated by correcting for the recovery efficiency of each analyte during the extraction procedure relative to the internal standard. In light of the disclosure of Chapple, it would have been obvious to one of ordinary skill in the art to add an internal standard to the container during the extraction step of the method disclosed by Peck so that any analyte of interest lost during the extraction process or gas chromatography can be accounted for.

With respect to claim 6, Peck discloses the step of recording information about the sample (see line 57, col. 9). Although the recorded information is absorbance readings from a spectrophotometer, it would have been obvious to record the gas chromatograph results as well. Furthermore, the reference discloses conducting a regression analysis of the data produced by the gas chromatograph (see Example 4,

col. 11). Based on the disclosure, it is evident that information about the sample analyzed via gas chromatography is recorded. Otherwise, a regression analysis could not be conducted.

With respect to claims 7, 8 and 12-21, neither Peck nor Chapple disclose the analysis of a tuber for the claimed chemicals. However, given that the method in Peck is directed towards the analysis of samples that are consumed by humans [i.e. soil, water and air (see lines 5-15, col. 6)] for contaminants, it would have been obvious to one of ordinary skill in the art to use the modified method disclosed by Peck to analyze other consumable samples such as tubers that absorb deleterious chemicals. Likewise, it would have been obvious to rinse the tuber sample prior to analysis to remove dirt and other analytes of non-interest, and it would have been obvious to analyze only a section of the tuber to minimize the time and ingredients used for the analysis.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH
9/28/07


Jill Warden
Supervisory Patent Examiner
Technology Center 1700